Supreme Court, U.S.
FILED

No.

031212 FEB 2 - 2004

In The

Supreme Court of the United States

ROSEMARIE CLAMPITT

V.

STARVING STUDENTS, INC.

On Petition For Writ Of Certiorari
To The Arkansas Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Rosemarie Clampitt
P.O. Box 21414
Hot Springs, AR 71903-1414
Telephone: (501) 760-3564

QUESTIONS PRESENTED

Whether a person has been denied due process and equal protection guaranteed by the U.S. CONSTITUTION, Amendment 14, § 1, when a lower court ignores a fair preponderance of hard evidence presented in a motion as to the wrongdoings by an Officer of the Court.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW..... 1

STATEMENT OF JURISDICTION.....2

STATUTORY / CONSTITUTIONAL
PROVISIONS INVOLVED 2

STATEMENT OF THE CASE.....3

REASONS FOR GRANTING
THE PETITION.....6

CONCLUSION.....9

APPENDIX.....10

A. Decision of Arkansas Court of Appeals ... 10
B. Decision of Trial Court 17
C. Decision of Arkansas Court of Appeals
Denying Rehearing 18
D. Decision of Arkansas Supreme Court
Denying Review 19

TABLE OF AUTHORITIES

CASES

Harris v Wyrick, 634 F.2d 1152(1980) 8

Maggitt v Wyrick,
533 F.2d 383, 385(8th Cir.1976) 8

Morrell v Morrell, 48 Ark.App.54(1994) 6

Ward v Dapper Dan Cleaners& Laundry, Inc.
309 Ark.192, 194-195(1992) 9

STATUTES

ARCP, Rule 11 9
FRCP, Rule 11.....9
28 U.S.C.§ 1254 2
28 U.S.C.§ 1343 2

OTHER AUTHORITIES

U.S. CONSTITUTION, Amendment 14 §1.....2, 9

PETITION FOR WRIT OF CERTIORARI

This Petitioner respectfully requests that a writ of certiorari be issued to review the decision and order of the Arkansas Court of Appeals on June 4, 2003, on these issues of substantial importance, that Appellant was denied due process in the lower court and the Arkansas Court of Appeals did not address the issue of denial of due process when it expressly combined due process with abuse of discretion in its opinion.

OPINIONS BELOW

The "NOT FOR PUBLICATION" opinion of the Arkansas Court of Appeals is reformatted and provided here as APPENDIX A. The Order of the Arkansas Trial Court (Circuit Court) is reformatted and provided here as APPENDIX B. The Decision of the Arkansas Court of Appeals Denying a Rehearing is reformatted and provided as APPENDIX C. The decision of the Arkansas Supreme Court Denying Review is reformatted and provided as APPENDIX D.

STATEMENT OF JURISDICTION

The Memorandum Decision of the Arkansas Court of Appeals was entered June 4, 2003. The Petition For Rehearing was timely filed on June 23, 2003, and was Denied by the Court of Appeals on July 30, 2003. A timely Petition For Review was filed on June 23, 2003, and was denied by the Arkansas Supreme Court on September 4, 2003. On December 8, 2003, the Honorable Justice Thomas extended the time to file this Petition to and including February 1, 2004, which is a Sunday.

The jurisdiction of this Court is invoked under 28 U.S.C.§1254(1). Original jurisdiction of the Circuit Court was invoked under 28 U.S.C.§1343.

STATUTORY/CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONSTITUTION, Amendment XIV, §1.

STATEMENT OF THE CASE

I guess the question is what is due process, because I submit that an illusory act of a right to be heard is not what our forefathers intended when they drafted our Constitution.

This Petitioner hired Respondent, Starving Students, Inc., a professional moving company, to move all of my personal property, including antiques, from Los Angeles, California, to Marion, Arkansas. This Petitioner paid $5,000.00 for the move and lost more than $100,000.00 from damage. Starving Students and this Petitioner did not even know where the shipment was for four (4) months after it was delivered not on the date agreed upon and in a blinding rain storm and to an outside storage facility randomly chosen by the driver or the moving company. My name was nowhere in the storage records. It was a full sixty-five foot van.

I never learned who chose the storage facility, since I was denied discovery with no answers or objections to my 7 Interrogatories properly served on Defendant and its counsel, Elton A. Rieves, IV, on December 28, 2001.

Petitioner hired attorney Constance G. Grayson of West Memphis, Arkansas, to handle this case against the moving company. Unbeknown to me, Mrs. Grayson granted the defendants ten (10) months of extensions to file a simple Answer to a simple Complaint, when Arkansas law provides for 20 days. Also unbeknown to me, I learned later that Mrs.Grayson never initiated any discovery whatsoever before she suddenly withdrew as attorney of record after a Motion To Compel was filed by the Defendant.

A Hearing was held on Defendant's motion before Judge Victor Hill, and Judge Hill made an order on December 7, 2001. The order was reduced to writing by Mr. Rieves and the last two lines were not what the Judge ordered. On December 31, 2001, in the afternoon, I found Judge Hill at the courthouse in Marion, Arkansas, and told him that he signed an order which was not accurate, and that I could not be in Arkansas in January.

Judge Hill called Mr. Rieves on the telephone while I was with Judge Hill in the clerk's office. As detailed in PLAINTIFF'S REQUEST FOR CORRECTION OF ORDER AND SANCTIONS AGAINST DEFENDANT AND DEFENDANT'S COUNSEL, filed February 8, 2002, this was the last day that Judge Hill would be in this circuit, and he made a docket entry stating that he would leave the disputed matter for the next judge to decide.

In compliance with Judge Hill's Order, this Petitioner timely provided 234 pages of documents to the Defendant. Also, in compliance with the order, I tried to schedule my deposition, but my attempts failed as Mr. Rieves refused to schedule my deposition.

My above referenced motion detailed and evidenced the wrongdoings by Mr. Rieves and was calendared for Hearing on June 11, 2002. It was the only motion calendared in this case, but Mr. Rieves' motion was the only one listed.

The Reporter's Transcript, provided to the Arkansas Court of Appeals in APPELLANT'S ABSTRACT, BRIEF AND ADDENDUM, filed November 25, 2002, evidences that the Hearing with our new Judge, David Goodson, was only illusory as a right to be heard and equal protection under the law, since Judge Goodson never questioned any of the wrongdoings by Mr. Rieves and the Defendant with their appalling "response"

to the Interrogatories and the proof that I attempted to schedule my deposition to comply with the order by Judge Hill, but that Mr. Rieves refused.

I provided the Reporter's Transcript of the Hearing with Judge Hill, not the Defendant, and Defendant's Motion For Sanctions was grounded only on the last two (2) lines of Judge Hill's written order which Mr. Rieves fabricated. Judge Goodson Dismissed the case from my deposition "still" not having been scheduled, which means that he ignored the evidence in my motion and what I said at the Hearing. [Reporter's Transcript, page 244 of APPELLANT'S ABSTRACT, BRIEF, AND ADDENDUM provided to the Arkansas Court of Appeals.]

The Arkansas Court of Appeals, in its Decision, stated that it found that the last two (2) lines of the written order signed by Judge Hill were not what he said at the Hearing, but that they were "constrained to review the written order actually entered by Judge Hill because a ruling from the bench does not become effective until it is reduced to writing, signed by the Judge, and filed of record with the court clerk."

I submit that the order was not a final order and could have been corrected by Judge Goodson. In fact, Judge Hill made the entry in the Docket on December 31, 2001, that he was leaving the dispute as to the last two (2)lines of his order for the new judge to decide, and my motion was for the correction of the order.

REASONS
FOR GRANTING THE PETITION

The Court of Appeals cited Morrell v Morrell, 48 Ark.App.54, 889 S.W.2d 772(1994) in its decision that the Court was "constrained to review the written order by Judge Hill," even though the Court found that the written order was not what Judge Hill said. In Morrell, the issue was that a Judge was free to alter his decision prior to it being written, signed and filed with the court. I submit that such is not the situation here. Judge Hill never said what Mr. Rieves wrote regarding the two week period and for the deposition to take place in Crittenden County. It was all fabricated by an Officer of the Court, in bad faith.

There were prevailing circumstances for my deposition to not have been scheduled, "still," and Judge Goodson denied this Petitioner due process by not even questioning this Petitioner or Mr. Rieves at the Hearing on the egregious wrongdoings detailed with hard evidence in my motion and at the Hearing. My letter of January 7, 2002, faxed and mailed to Mr. Rieves telling him that I had sent the 234 pages of documents and my attempt to schedule my deposition should be evidence enough that that I was complying with Judge Hill's order. I had to stay in Memphis, for the month of December, to attempt to find the documents in open storage with atrociously damaged boxes, in the snow and freezing rain, while having to use a walker for mobility, and I served INTERROGATORIES on the Defendant on December 28, 2001. I was cooperative with discovery.

Mr. Rieves was questioned by the Court of Appeals as to why he did not schedule my deposition in December while I was in the Arkansas area and he said

that the order by Judge Hill was that it had to be scheduled in January.

Mr. Rieves intentionally fabricated the last two (2) lines of Judge Hill's written order so that he could get sanctions and even asked for terminating sanctions when he knew that Judge Hill had said it would be dismissed without prejudice. As detailed in APPELLANT'S ABSTRACT, BRIEF AND ADDENDUM, Mr. Rieves and I discussed Judge Hill's order in the hall outside the courtroom immediately following the December 7 Hearing and there was no question as to what Judge Hill ordered, as I stated in my declaration.

It was the Defendant who abused discovery, not this Petitioner. As I stated in APPELLANT'S REPLY BRIEF, the Appellee only re-hashed moot issues which were decided by Judge Hill at the Hearing held on December 7, 2001, as being irrelevant, i.e., deposition schedulings which transpired prior to the unexpected withdrawal of my legal counsel, Constance Grayson. [Appellant's Abstract: p.7] Judge Hill adjudicated that issue, and yet Mr. Rieves used it as a live issue to support his MOTION FOR SANCTIONS.

Continuing in APPELLANT'S REPLY BRIEF, on page 2, The issues on appeal are 1) The intentional falsification of an order by an officer of the court which resulted in the dismissal of a case against his client when the lower court, on June 11, 2002, abused its discretion and held against the fair preponderance of the evidence and 2)Denial of due process when this Plaintiff/Appellant had a proper and timely Motion duly calendared in the lower court which presented a fair preponderance of hard evidence as to more egregious wrongdoing by the same officer of the court, which was ignored by the lower court.

The June 11, 2002 reporter's transcript also evidences the fact that the Defendnt and its counsel made

a mockery of the discovery process with total disrespect for our legal system. Did the Defendant and its counsel ever provide legitimate discovery to the INTERROGATORIES served on them by this Plaintiff, In Propia Persona? No, they did not. Their sole quest was to have this case dismissed and even attempted to have it dismissed with prejudice although Judge Hill had said it would be without prejudice.

The law is clear that an unfavorable decision does not necessarily constitute a violation of due process, but that is when there has been a full Hearing or opportunity for Hearing. The question would then be as to what elements constitute a full Hearing, and this Petitioner contends that the transcript evidences that the Hearing held on June 11, 2002, by Judge Goodson, was only the appearance of a legitimate Hearing, as I detailed in the Argument section of APPELLANT'S ABSTRACT, BRIEF AND ADDENDUM.

In Harris v Wyrick, 634 F.2d 1152(1980), the United States Court of Appeals, Eighth Circuit, citing Maggitt v Wyrick, 533 F.2d 383, 385(8th Cir.1976)stated that to establish a denial of due process, a petitioner must prove that an error asserted was of such magnitude that it failed to afford him fundamental fairness which is the essence of due process. U.S.C.A.Const.Amends.5, 14.

There was certainly no fundamental fairness in the lower court with Judge Goodson and I believe that the Court of Appeals denied this Petitioner due process when it did not address the issue separately, but rather combined it into an abuse of discretion. Is it within the power of a Judge to use discretion as to whether he wants to afford a person due process in a courtroom? It appears that Judge Goodson never read my motion because he never questioned Mr. Rieves or myself regarding the charges made in my motion, detailing the egregious acts

by Mr. Rieves. In Ward v Dapper Dan Cleaners & Laundry, Inc., 309 Ark.192, 194-195(1992), the Supreme Court of Arkansas held that "when violation of Rule 11 occurs, the Rule makes sanctions mandatory." Judge Goodson never questioned anything that was in my motion and I was denied due process.

The question of whether a person has been denied due process and equal protection guaranteed by the U.S. CONSTITUTION, Amendment 14 §1, when a lower court ignores a fair preponderance of hard evidence presented in a motion as to the wrongdoings by an Officer of the Court arises on the basis of simple and undisputed facts as detailed in my motion before Judge Goodson, PLAINTIFF'S REQUEST FOR CORRECTION OF ORDER AND SANCTIONS AGAINST DEFENDANT AND DEFENDANT'S COUNSEL, which commenced at page 113 in APPELLANT'S ABSTRACT, BRIEF AND ADDENDUM, filed November 25, 2002.

CONCLUSION

This Petitioner submits that a gross injustice has occurred in this case and I respectfully request that a Writ of Certiorari be granted.

Respectfully submitted,

Rosemarie Clampitt
Petitioner, In Propia Persona

P.O. Box 21414
Hot Springs, AR 71903-1414
Telephone: (501)760-3564

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION III

CA02-1072

June 4, 2003

ROSEMARIE CLAMPITT
APPELLANT

v.

STARVING STUDENTS, INC.
APPELLEE

AN APPEAL FROM CRITTENDEN COUNTY
CIRCUIT COURT [CIV-00-252]

HONORABLE DAVID GOODSON,
CIRCUIT JUDGE

AFFIRMED

> This is a *pro se* appeal from an order dismissing without prejudice appellant's complaint as a sanction for her failure to comply with a discovery order. We affirm.

While residing in California, appellant Rosemarie Clampitt contracted with appellee Starving Students, Inc., to move appellant's household furnishings from California to Crittenden County, Arkansas. On May 31, 2000,

APPENDIX A

appellant, represented by counsel, filed suit against appellee, seeking damages for negligence and breach of contract. After several agreed-upon extensions of time, appellee filed an answer to the complaint on May 24, 2001. On August 1, 2001, appellee filed and sent to appellant's counsel a notice to take appellant's deposition on August 6, 2001. On September 26, 2001, appellee filed and sent to appellant's counsel another notice to take appellant's deposition on October 12, 2001. On October 26, 2001, appellee filed a motion to compel discovery, alleging that appellant had failed toappear for the two depositions[1] and that appellant had failed to answer certain requests for production of documents. Appellant's counsel was permitted to withdraw by order dated October 30, 2001, and filed of record on November 7, 2001. The motion to compel was set for hearing on December 7, 2001.

The hearing on appellee's motion to compel discovery was held before Circuit Judge Victor Hill. After hearing appellant's explanation for why discovery had not occurred, Judge Hill found that the imposition of sanctions would not be appropriate. After a further colloquy between Judge Hill and appellant over the amount of time appellant needed to respond to the request for production of documents and appellant responding "a couple of months," Judge Hill ruled from the bench: "I'm going to give you 30 [days to] compile these documents and get them to [appellee's] attorney, and two weeks thereafter to schedule a deposition. And if you do not, my order will reflect that the case will be dismissed without prejudice." The written order dated December 27, 2001, and filed on December 31, 2001, reflected that appellant was required to respond to appellee's requests for production of documents not later than January 7, 2002,

and then provided "that [appellant] submit to an oral deposition in Crittenden County, Arkansas, sometime during the week of January 7 or January 14, 2002."

Judge Hill was made aware of the conflict between his oral ruling and the written order during a conference call with appellant and appellee's counsel on December 31, 2001. Judge Hill made a docket notation of the call and of his decision to allow the next judge to whom the case was assigned to resolve the conflict.2

On January 7, 2002, appellee filed and served on appellant a notice to take appellant's deposition at 10:00 a.m. on January 18, 2002. On January 18, 2002, appellee filed a motion for sanctions, reciting the prior history of the case and alleging that appellant had failed to appear for the depositions within the time provided by Judge Hill's order. The motion sought dismissal of appellant's action with prejudice, or, in the alternative, other appropriate sanctions such as payment of appellee's attorney's fees. On February 8, 2002, apparently in response to appellee's motion, appellant filed a "Request for Correction of Order and Sanctions against Defendant and Defendant's Counsel," in which she sought correction of Judge Hill's written order to conform with his oral ruling from the bench. Appellant alleged that a transcript of the December 7 hearing before Judge Hill would confirm her assertion that Judge Hill only intended that appellant's deposition be scheduled during the weeks of January 7 or January 14. Appellant also alleged that appellee's counsel prepared the order in bad faith and sought sanctions against counsel under both Ark. R. Civ. P. 11 and Ark. R. Civ. P. 37.

A hearing on the two motions was held on June 11, 2002, before Judge Goodson. The parties agreed that appellant had complied with that part of Judge Hill's order concerning appellant's response to the request for production of documents. Appellee's counsel recited the litigation history up to that point in time. Appellant argued that appellee's counsel "fabricated" in bad faith that part of Judge Hill's order requiring her actual attendance at the deposition instead of having the deposition scheduled during the two-week period and that the transcript from the hearing before Judge Hill confirmed her interpretation of the order. Appellant also argued that appellee's objections to her interrogatories were improper. In response to a question from the court, appellant admitted that her deposition had not been scheduled. The trial court then dismissed appellant's action without prejudice and denied all other relief sought by either party. A written order memorializing the ruling was entered the same afternoon. This appeal followed.[3]

Appellant argues (1) that she was denied due process; and (2) that the lower court held against the fair preponderance of the evidence. Basically, both points argue that the trial court abused its discretion in dismissing her action. We discuss both points together.

The imposition of sanctions for the failure to make discovery rests in the trial court's discretion and will not be overturned absent an abuse of that discretion. *Viking Ins. Co. v. Jester*, 310 Ark. 317, 836 S.W.2d 371 (1992); *Goodwin v. Harrison*, 300 Ark. 474, 780 S.W.2d 518 (1989). A trial court's exercise of discretion in granting severe Rule 37 sanctions for flagrant discovery violations has been upheld several times. *Id.*; *Rodgers v. McRaven's Cherry Pickers, Inc.* 302 Ark. 140, 788 S.W.2d 227

(1990); *Cagle v. Fennel*, 297 Ark. 353, 761 S.W.2d 926 (1988). For example, our courts have affirmed dismissals withprejudice for failing to answer interrogatories, *Dunkin v. Citizens Bank of Jonesboro*, 291 Ark. 588, 727 S.W.2d 138 (1987), produce tax returns in response to requests for production of documents, *Cook v. Wills*, 305 Ark. 442, 808 S.W.2d 758 (1991), and for failing to attend one's own deposition. *Cagle v. Fennel, supra*. The trial judge is in a superior position to balance the explanation offered for noncompliance with the discovery order and the need for sanctions for appellant's failure to comply with that order. *See Graham v. Sledge*, 28 Ark. App. 122, 771 S.W.2d 296 (1989). The fact that the sanction imposed by the trial court was severe is of no consequence, as Rule 37 specifically provides for the dismissal of an action where a party fails to provide discovery. *Calandro v. Parkerson*, 333 Ark. 603, 970 S.W.2d 796, 799 (1998).

> Authority for the trial court's action can be found in our rules of civil procedure. Arkansas Rule of Civil Procedure 26(b)(1) provides that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the issues in the pending actions...." Rule 37(d) states that if a party fails to attend his deposition "the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B) and (C) of subdivision (b)(2) of this rule." Rule 37(b)(2)(C) then permits the court to enter an order "dismissing the action or proceeding or any part thereof."

This is a situation in which appellant and counsel for appellee have different interpretations of Judge Hill's intentions in his order. Appellant took the position that Judge Hill meant only that she had to agree to a date for her deposition within the two-week period. Appellee argues that the deposition was to be conducted during that time period. Appellantargued below and argues here that the transcript of the December 7 hearing supports her interpretation of Judge Hill's order. A review of the transcript of the hearing before Judge Hill confirms appellant's interpretation of the order. However, we are constrained to review the written order actually entered by Judge Hill because a ruling from the bench does not become effective until it is reduced to writing, signed by the judge, and filed of record with the court clerk. *Standridge v. Standridge*, 298 Ark. 494, 769 S.W.2d 12 (1989); *Morrell v. Morrell*, 48 Ark. App. 54, 889 S.W.2d 772 (1994). Judge Goodson, in resolving that conflict, found that appellant admitted that she did not schedule her deposition within the two-week period provided for by Judge Hill's order. Accepting appellant's interpretation as correct, she still did not comply with Judge Hill's discovery order by scheduling her deposition within the designated time. Appellant had a duty to obey Judge Hill's order as written until the order was set aside or overturned. *Potter v. Easley*, 288 Ark. 133, 703 S.W.2d 442 (1986); *Ex Parte Coffelt*, 239 Ark. 324, 389 S.W.2d 234 (1965). It was therefore within Judge Goodson's discretion to dismiss appellant's action without prejudice.

Appellant appears to argue that Judge Hill's decision that no sanctions should be imposed somehow precluded Judge Goodson from imposing sanctions or that Judge Goodson somehow "overruled" Judge Hill's order. There is nothing in Judge Hill's comments from the bench or in the written order that would indicate that Judge Hill intended to preclude the imposition of sanctions in the future. We do not believe that Judge Goodson "overruled" Judge Hill's order; rather, Judge Goodson's order only enforced Judge Hill's order and was consistent with Judge Hill's pronouncement from the bench at the conclusionof the December 7 hearing that appellant's failure to comply with discovery would result in dismissal of the action. *See Graham v. Sledge*, *supra*.

Affirmed.

Bird and Roaf, JJ., agree.

1 The motion stated that appellant's counsel notified appellee prior to each deposition that appellant would not attend the deposition.

2 Judge Hill entered an order reassigning the case to Circuit Judge John Fogleman, apparently because of changes in that judicial district's administrative plan under Amendment 80. Judge Fogleman entered an order on February 26, 2002, transferring the case to Circuit Judge David Goodson due to an unspecified conflict.

3 Appellee filed a notice of cross-appeal. However, appellee makes no argument for reversal and expressly abandons the cross-appeal in its brief.

FILED 2002 JUN 11 PM 3:27
IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS CIVIL DIVISION

ROSEMARIE CLAMPITT PLAINTIFF

V NO. CIV-2000-252
STARVING STUDENTS, INC. DEFENDANT

ORDER OF DISMISSAL WITHOUT PREJUDICE

Now on this 11th day of June, 2002, this matter comes on for hearing on Defendant's Motion for Sanctions filed January 18, 2002 and the Plaintiff's Request For Correction of Order and Sanctions against the Defendant and the Defendant's counsel filed February 19th, 2002. Plaintiff, Rosemarie Clampitt, appears in person pro se, and the Defendant appeared by its attorney, Elton Rieves, IV.

Based upon a review of the transcript of the proceedings before the Honorable Victor Hill, Circuit Judge, on December 7th, 2001, the court finds the Plaintiff's Complaint should be and hereby is dismissed without prejudice.

All further relief requested by either party was denied by the court. The Crittenden County Circuit Clerk is hereby directed to mail a file-marked copy of this order to the Plaintiff by regular mail addressed to Ms. Rosemarie Clampitt, P.O. Box 351494, Los Angeles, California 90035; and, Ms. Rosemarie Clampitt, P.O. Box 21414, Hot Springs, AR 71903-1414; and to Elton Rieves IV, P.O. 1359, West Memphis, AR 72303.

IT IS SO ORDERED.

S/
DAVID GOODSON, CIRCUIT JUDGE

APPENDIX B

Office of the Clerk
Supreme Court of the State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

July 30, 2003

Rosemarie Clampitt
P.O. Box 21414
Hot Springs, AR 71903

RE: CA 02 01072
Rosemarie Clampitt v. Starving Students, Inc.

Dear Ms. Clampitt:

The Arkansas Court of Appeals made the following order today in the above styled case:

"Petition for Rehearing is denied."

Sincerely,

S/

Leslie W. Steen, Clerk

LWS:mmf

Cc: Elton A. Rieves,IV
Donna Palmer, CircuitClerk
(Circuit Court No. CIV-00-252)

APPENDIX C

Office of the Clerk
Supreme Court of the State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

September 4, 2003

Rosemarie Clampitt
P.O. Box 21414
Hot Springs, AR 71903

RE: 03-712
Rosemarie Clampitt v. Starving Students, Inc.

Dear Ms. Clampitt:

The Arkansas Supreme Court made the following order today in the above styled case:

"Petition for review is denied."

Sincerely yours,

S/

Leslie W. Steen, Clerk

LWS:jko

Cc: Elton Rieves,IV
Donna Palmer, Clerk
(CIV-00252)

APPENDIX D

(2)

No. 03-1212

Supreme Court, U.S.
FILED
APR 2 6 2004
OFFICE OF THE CLERK

In The

Supreme Court of the United States

ROSEMARIE CLAMPITT,

Petitioner,

v.

STARVING STUDENTS, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Arkansas Court Of Appeals, Division III

BRIEF IN OPPOSITION FOR RESPONDENT

STEPHEN P. EISENBERG
Counsel of Record
LEAHY, EISENBERG & FRAENKEL, LTD.
Attorneys for Starving Students, Inc.
161 North Clark Street
Suite 1325
Chicago, Illinois 60610
(312) 368-4554

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

QUESTION PRESENTED

WHETHER A COURT VIOLATED A LITIGANT'S DUE PROCESS AND EQUAL PROTECTION RIGHTS BY DISMISSING LITIGANT'S CLAIM BECAUSE OF LITIGANT'S FAILURE TO COOPERATE WITH DISCOVERY ORDERS.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Starving Students, Inc. is a privately held California corporation. None of its shares are held by a publicly traded company.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
STATEMENT OF JURISDICTION	1
STATUTORY/CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	5
I. PETITIONER MISSTATES LAW AND FACT IN THE PETITION FOR WRIT OF CERTIORARI	5
A. Respondent Memorialized the Ruling and Intent of the Trial Court Judge	5
B. Petitioner Failed to Schedule a Deposition Within the Time Ordered by the Court	8
C. Petitioner Failed to Cooperate During Discovery	8
II. THE LOWER COURT DID NOT DENY PETITIONER DUE PROCESS OR EQUAL PROTECTION RIGHTS	10
A. Petitioner Presents No Facts That the Lower Court Failed to Fully Consider Petitioner's Arguments or Provide Her With an Opportunity to be Heard	10

TABLE OF CONTENTS – Continued

Page

B. The Lower Court Correctly and Adequately Assessed the Trial Court's Use of Its Discretionary Powers 11

C. Respondent Acted Appropriately Throughout Discovery and the Lower Court Proceedings 12

CONCLUSION 13

TABLE OF AUTHORITIES

Page

CASES:

Armstrong v. Manzo, 380 U.S. 545 (1965) 10

Calandro v. Parkerson, 333 Ark. 603, 970 S.W.2d 796 (1998) 12

Clampitt v. Starving Students, Inc., No. CA02-1072 (Ark. Ct. App., June 4, 2003) 7, 8, 12

Flemings v. Littles, 325 Ark. 367, 926 S.W.2d 445 (1996) 11

Ingram v. City of Pine Bluff, et al., No. 03-342, 2003 Ark. LEXIS 652 (Dec. 4, 2003) 10

Mathews v. Eldridge, 424 U.S. 319 (1976) 10

Morrell v. Morrell, 48 Ark. App. 54, 889 S.W.2d 772 (1994) 7

Standridge v. Standridge, 298 Ark. 494, 769 S.W.2d 12 (1989) 7

Watson v. City of Fayetteville, 322 Ark. 324, 909 S.W.2d 637 (1995) 11

STATUTES:

Ark. R. Civ. P. Rule 37 (Michie 2003) 9

CONSTITUTIONAL PROVISIONS:

U.S. CONST. amend. XIV, § 1 ..... 1, 2, 10

STATEMENT OF JURISDICTION

The Arkansas Court of Appeals entered its Memorandum Decision on June 4, 2003. Petitioner filed a Petition for Rehearing in the Arkansas Court of Appeals on June 23, 2003, which was denied on July 30, 2003. The Petition for Review was filed by Petitioner in the Arkansas Supreme Court on June 23, 2003, and denied on September 4, 2003. On November 26, 2003, Petitioner filed an application to extend the time to file a Petition for a Writ of Certiorari. Justice Thomas granted Petitioner's request for an extension of time to file until February 1, 2004. Petitioner filed the Petition for Writ of Certiorari on February 2, 2004. On March 17, 2004, Respondent requested an extension of time to file its Brief in Opposition. The Clerk of the Court granted Respondent's request for an extension of time, up to and including April 26, 2004.

The United States Supreme Court has jurisdiction under 28 U.S.C. §1254(1). Petitioner incorrectly states that original jurisdiction of "the Circuit Court" was invoked under 28 U.S.C. §1343. Pet. 2. However, that section only confers original jurisdiction upon *district courts* with respect to certain civil rights and elective franchise.

STATUTORY/CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state

> wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. CONST. amend. XIV, § 1

STATEMENT OF THE CASE

This is a case in which Rosemarie Clampitt ("Petitioner") claims to have been unjustly treated by everyone with whom she came in contact during the proceedings below. Petitioner is proceeding *pro se*.

Petitioner contends that she was treated unjustly by her own attorney, who withdrew from representation early on in the case. She claims that she was treated unjustly by Starving Students' ("Respondent") attorney who allegedly "fabricated" the last two lines of an order compelling her to submit to a deposition within a stated two-week period. She claims that she was treated unjustly by the Honorable Victor Hill, Circuit Judge in the Circuit Court of Crittenden County, Arkansas, Civil Division, who refused to revise the "fabricated" order so that it would comport with *Petitioner's* understanding of the court's holding announced in open court. She further claims that she was treated unjustly by the Honorable David Goodson, Judge Hill's successor as a Circuit Judge in the Circuit Court of Crittenden County, Arkansas, Civil Division, who likewise failed to revise the "fabricated" order.

Respondent first filed a notice to take the deposition of Petitioner on August 6, 2001. The deposition was postponed at the Petitioner's request. Respondent issued a second notice to take Petitioner's deposition on October 12, 2001. Petitioner again failed to appear for her deposition. Respondent filed a motion to compel the appearance of Petitioner for her deposition. On December 7, 2001, the Honorable Victor Hill heard arguments on Respondent's motion to compel. At that hearing, Judge Hill ordered, in part, that Petitioner respond to Respondent's outstanding written discovery no later than January 7, 2002, and submit to a deposition within two weeks thereafter.

Respondent's attorney prepared a proposed Order Compelling Discovery that was mailed to Petitioner on December 10, 2001. On December 20, 2001, having received no response from Petitioner, Respondent's attorney mailed the proposed order to Judge Hill for his consideration. The transmittal letter stated, in part, that: *If its [the Order Compelling Discovery's] form meets with your approval, please sign on the line provided for your signature and return the order to me in the self-addressed, stamped envelope that is enclosed for your convenience.* On December 27, 2001, the order was signed by Judge Hill and mailed to Respondent's attorney. On December 31, 2001, the order was filed with the clerk's office. That same day, Petitioner requested that the court revise the order to allow her additional time to appear for her deposition. The Court declined to do so.

After Petitioner refused to supply Respondent's attorney with dates during the two-week period beginning January 7, 2002, upon which it would be convenient for her to appear for a deposition, Respondent's attorney, on January 7, 2002, issued a notice to take the deposition of

Petitioner on January 18, 2002. This was the last weekday within the two-week time frame set forth by the court in its order of December 27, 2001. Petitioner failed to appear for her scheduled deposition on January 18, 2002.

On January 18, 2002, Respondent filed a motion for sanctions against Petitioner for her failure to comply with the court's Order Compelling Discovery. On February 8, 2002, Respondent filed a motion that requested the court to alter the order as written and to enter sanctions against Respondent's attorney. She argued that Respondent's attorney had "fabricated" that portion of the order requiring that she appear for her deposition sometime during the week of January 7 or January 14, 2002.

A hearing on the two motions was held on June 11, 2002. At the hearing, the trial court affirmed its December 27, 2001, order as entered, and dismissed Petitioner's complaint for her failure to appear for her deposition. The court denied Petitioner's motion.

Petitioner filed a Petition for Review in the Arkansas Court of Appeals, Division III, on or about November 27, 2002. She argued that the Circuit Court Judge, Judge Goodson, had created reversible error by considering issues previously decided by Judge Hill. She argued that the only issue was whether the court had intended the last two lines of the December 27, 2001, order to be included, yet Judge Goodson had considered other issues in making his decision. She also argued that her due process rights had been violated. The Arkansas Court of Appeals denied Petitioner's Petition on June 4, 2003.

The Court of Appeals also denied Petitioner's Petition for Rehearing on July 30, 2003. On September 4, 2003, the

Supreme Court of Arkansas denied the Petitioner's Petition for Review.

Petitioner's claim that she has been denied due process throughout this lengthy litigation has no merit. Numerous courts within Arkansas have reviewed the applicable facts and law of this case, and have repeatedly ruled against Petitioner. Though Petitioner may not like the result, she has been treated fairly, with an adequate opportunity to be heard on this matter.

REASONS FOR DENYING THE WRIT

I. PETITIONER MISSTATES LAW AND FACT IN THE PETITION FOR WRIT OF CERTIORARI

In accordance with Supreme Court Rule 15.2, Respondent has identified numerous misstatements of law and fact presented in Petitioner's Petition for Writ of Certiorari which have been noted below.

A. Respondent Memorialized the Ruling and Intent of the Trial Court Judge

Petitioner alleges that she was denied due process because of the Trial Court's December 27, 2001, order required that she appear for her deposition on or before January 18, 2002. The last two lines of the December 27, 2001, order provided, in part, that, "the Court doth find that the Plaintiff [Petitioner] should be, and hereby is, directed to submit to an oral deposition in Crittenden County, Arkansas, sometime during the week of January 7 or January 14, 2002." Petitioner incorrectly states that the order does not reflect what the Judge ruled from the bench. Pet. 4.

Petitioner further incorrectly alleges that the order was "fabricated by an Officer of the Court," Respondent's attorney, "in bad faith." Pet. 5, 6, 7.

Judge Hill stated the following in open court on December 7, 2001: "I am going to give you thirty [days to] compile these documents and give them to the Defendant, . . . and two weeks thereafter to schedule the deposition." Apparently, Respondent interpreted Judge Hill's statement to mean that the Petitioner must be deposed no later than two weeks after the thirty-day limit to respond to written discovery. Respondent's interpretation was the only plausible explanation when considered in the context of the hearing. Just minutes before the court had made the statement at issue, Respondent's counsel stated that, "we would ask that the Plaintiff be given two weeks from today to have the documents to us, and then that she be required to submit to a deposition here in Crittenden County within two weeks thereafter." When these two statements are considered together, it is clear that the Court ordered Petitioner to appear for her deposition within the time prescribed. The court directed Petitioner to appear for her deposition within two weeks after producing documents that had been requested during discovery. The court ordered that such documents be produced no later than January 7, 2002. Accordingly, under the Court's ruling, Petitioner was required to appear for her deposition within two weeks thereafter.

Furthermore, the subject order had no judicial enforcement until it was executed by the judge. The Arkansas Court of Appeals recognized that despite the potential ambiguity created by the Judge's statements in open court, "a ruling from the bench does not become effective until it is reduced to writing, signed by the judge, and filed with

the court clerk." Pet. 15. *Clampitt v. Starving Students, Inc.*, No. CA02-1072 (Ark. Ct. App., June 4, 2003), *citing Standridge v. Standridge,* 298 Ark. 494, 769 S.W.2d 12 (1989), and *Morrell v. Morrell,* 48 Ark. App. 54, 889 S.W.2d 772 (1994).

Petitioner references the Arkansas Court of Appeals' reliance on *Morrell v. Morrell* in her Petition. She correctly states that at issue in *Morrell* was a judge's freedom to alter a decision prior to writing, signing, and filing an order. Pet. 6. However, she incorrectly states that "this is not the situation here." Pet. 6. *Morrell* precisely applies to this case. In our case, a judge had an opportunity to alter the order prior to signing and filing it with the court clerk. Judge Hill had an opportunity to change the wording of the order if it did not comport with the Judge's intended ruling.

Petitioner ignores the fact that the transmittal letter to Judge Hill that accompanied the proposed order requested that the judge review the order. The transmittal letter stated, "if its form meets with your approval, please sign on the line provided for your signature and return the order to me in the self-addressed, stamped envelope that is enclosed for your convenience." Upon receipt of the order, Judge Hill signed the order and returned it to Respondent's counsel, unchanged. Judge Hill did not choose to alter the wording of the order despite the opportunity to do so, as described in *Morrell*. Similarly, the proposed order was sent to Petitioner, but she failed to respond prior to Judge Hill signing and filing it.

After the order was entered, Petitioner requested, on two separate occasions, that the wording of the subject order be changed to comport with her understanding of the

court's ruling. Petitioner's requests were denied. As Petitioner acknowledged in her Petition, both Judge Hill and Judge Goodson refused to change the wording of the order despite her requests.

B. Petitioner Failed to Schedule a Deposition Within the Time Ordered by the Court

Petitioner also falsely claims that she "tried" to schedule her deposition, but her attempts "failed" because Respondent's counsel "refused" to schedule it. Pet. 4. Petitioner made no attempt to schedule her deposition during the two weeks specified by the court. The Arkansas Court of Appeals ruled in its June 4, 2003, decision that even if it accepted Petitioner's interpretation of the written discovery order, "she still did not comply with Judge Hill's discovery order by scheduling her deposition within the designated time." Pet. 15. *Clampitt v. Starving Students, Inc.*, No. CA02-1072 (Ark. Ct. App., June 4, 2003).

Petitioner only attempted to schedule her deposition beyond the time requirements provided by the court. Even Petitioner's late efforts were qualified and inconsistent with the subject order. Petitioner subsequently agreed to appear for her deposition in February 2002, *but only if* Respondent paid for Petitioner's travel expenses, including transportation, lodging, food, and incidentals. It is uncontested, as the Arkansas Court of Appeals stated, that Petitioner failed to comply with the court's order.

C. Petitioner Failed to Cooperate During Discovery

Cooperation between litigants is an essential and basic part of the discovery process. Petitioner incorrectly

states that she "was cooperative with discovery." Pet. 6. The sequence of events during the discovery process betrays Petitioner's position.

On January 4, 2002, after Judge Hill's order had been signed and filed, Respondent's attorney sent an e-mail letter to Petitioner requesting available dates to schedule her deposition. The letter also notified Petitioner that if she failed to respond by noon on January 7, 2002, Respondent would issue a Notice of Deposition to her. On January 7, 2002, Respondent's attorney sent another e-mail letter to Petitioner reminding her that she needed to reply by noon on that day to schedule her deposition. After the deadline had passed, and Petitioner had not responded, a Notice of Deposition was issued by Respondent to schedule Petitioner's deposition for January 18, 2002. Respondent chose the date to allow Petitioner as much time as possible to appear for her deposition, but still comply with the date restrictions established by Judge Hill.

By letter dated January 8, 2002, Respondent reminded Petitioner of the court's order requiring her to appear for a deposition during the weeks of January 7, 2002, or January 14, 2002. Respondent's letter included a copy of Arkansas Civil Procedure Rule 37 and cautioned Petitioner that sanctions would be requested if she failed to appear for her deposition for the third time. Ark. R. Civ. P. Rule 37 (Michie 2003).

On January 14, 2002, Petitioner sent an e-mail letter to Respondent's attorney with accusations of fabricating the order and unethical conduct. On January 18, 2002, Petitioner failed to appear for her scheduled deposition. This represented Petitioner's third failure to appear for her deposition, regardless of a court order requiring that

she appear. These facts show that Petitioner refused to appear for her own deposition and to cooperate during discovery.

II. THE LOWER COURT DID NOT DENY PETITIONER DUE PROCESS OR EQUAL PROTECTION RIGHTS

The lower courts did not violate Petitioner's due process rights. Courts have found that the due process requirement of the Fourteenth Amendment to the United States Constitution can be met without the necessity of oral argument. U.S. CONST. amend. XIV, § 1. Petitioner claims that her rights were violated when Judge Goodson decided Petitioner's Request for Correction of the Order without questioning her on the merits of Petitioner's argument. Pet. 9. A court only must allow a litigant an opportunity to be heard "at a meaningful time and in a meaningful manner" before it may rule on a case. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), *quoting Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Written pleadings can equate to an opportunity to be heard. *Ingram v. City of Pine Bluff, et al.*, No. 03-342, 2003 Ark. LEXIS 652 (Dec. 4, 2003). Since Petitioner had the opportunity to file pleadings, her rights were not violated when Judge Goodson ruled against Petitioner.

A. Petitioner Presents No Facts That the Lower Court Failed to Fully Consider Petitioner's Arguments or Provide Her With an Opportunity to be Heard

Petitioner states that the hearing held before Judge Goodson was "only illusory as a right to be heard," because

the judge chose not to question Respondent's counsel. Pet. 4. Yet, questions from the bench are not required in any proceeding as long as the judge understands the issues presented.

Undoubtedly, where life and liberty are involved, due process requires that there be a regular course of judicial proceedings, which implies that the party to be affected shall have notice and an opportunity to be heard. Petitioner had notice of all proceedings. Likewise, Petitioner had a fair opportunity to persuade the judge to rule on her behalf. Neither Judge Hill nor Judge Goodson agreed with Petitioner's interpretation of the facts and the law. Despite Petitioner's allegations that Judge Goodson did not fully consider her arguments, she presents no law or fact that supports her proposition.

B. The Lower Court Correctly and Adequately Assessed the Trial Court's Use of Its Discretionary Powers

Petitioner mistakenly argues that the Arkansas Court of Appeals incorrectly analyzed the trial court's use of its discretionary powers. Petitioner claims that her due process rights were violated when the lower court analyzed her claim in the context of whether the trial court abused its discretion. Pet. 8. However, Arkansas courts have consistently defined due process violations as an abuse of discretion by the trial court judge. *See, e.g., Watson v. City of Fayetteville*, 322 Ark. 324, 330, 909 S.W.2d 637, 640 (1995); *see also, Flemings v. Littles*, 325 Ark. 367, 372-373, 926 S.W.2d 445, 448 (1996).

The Court of Appeals in our case correctly applied Arkansas law in its analysis of Petitioner's due process violation claims. In its opinion, it stated the following:

> "The imposition of sanctions for the failure to make discovery rests in the trial court's discretion and will not be overturned absent an abuse of that discretion. [citations omitted] A trial court's exercise of discretion in granting severe Rule 37 sanctions for flagrant discovery violations has been upheld several times. [citations omitted] . . . The fact that the sanction imposed by the trial court was severe is of no consequence, as Rule 37 specifically provides for the dismissal of an action where a party fails to provide discovery. *Calandro v. Parkerson*, 333 Ark. 603, 970 S.W.2d 796, 799 (1998)."

Clampitt v. Starving Students, Inc., No. CA02-1072 (Ark. Ct. App., June 4, 2003). Pet. 13-14.

The Court of Appeals applied well-established Arkansas precedent to analyze Petitioner's due process claim. No abuse by the trial court was found and the Petition for Writ of Certiorari lacks any argument against the Court of Appeals' analysis. Petitioner submits a bold statement in alleging a violation of due process, yet falls short of providing a reasoned argument as to how the court's analysis was incorrect.

C. Respondent Acted Appropriately Throughout Discovery and the Lower Court Proceedings

Petitioner included several incorrect statements in her Petition for Writ of Certiorari regarding the conduct of Respondent. For example, Petitioner states that Respondent

made a "mockery of the discovery process with total disrespect for our legal system." Pet. 7-8. Respondent made every effort to comply with the written order entered by Judge Hill. Respondent even tried to assist Petitioner in meeting the demands of the trial judge, but Petitioner refused. Furthermore, there were no "egregious acts" by Respondent. Pet. 8. Petitioner's accusation that Respondent "fabricated" the order is untrue and unsupported by the facts.

CONCLUSION

Respondent, Starving Students, Inc., requests that this Court deny the Petition for a Writ of Certiorari and hold that the discovery orders previously entered, and the procedural steps taken thereafter, comport with the requirements of due process. No due process violation occurred and Petitioner asserts no legitimate argument as to why the lower courts' rulings were incorrect, or unjust.

Respectfully Submitted,

STEPHEN P. EISENBERG
Counsel of Record
LEAHY, EISENBERG, & FRAENKEL, LTD.
Attorneys for Starving Students, Inc.
161 North Clark Street
Suite 1325
Chicago, Illinois 60601
(312) 368-4554

(4)

No. 03-1212

In The

Supreme Court of the United States

ROSEMARIE CLAMPITT

V.

STARVING STUDENTS, INC.

On Petition For Writ Of Certiorari
To The Arkansas Court of Appeals

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Rosemarie Clampitt
P.O. Box 21414
Hot Springs, AR 71903-1414
Telephone: (501) 760-3564

INTRODUCTION

I guess the question is still what is due process, because I submit that an illusory act of a right to be heard is not what our forefathers intended when they drafted our Constitution stating that we had a right to be heard.

After Respondent's extension of time to file Respondent's Brief, my reply brief then became due on May 6, 2004, while I was on the Campaign Trail, as a candidate for the United States Senate to represent the State of Arkansas. I called the court clerk and was informed that formal extensions for a Reply Brief are not given, but as long as this reply was filed before May 27th, it would be accepted. I respectfully submit this REPLY.

The issue of honor within the Judicial Branch is rightfully an issue in this current election. Whether the judiciary is a United States Supreme Court Justice or a small claims (People's Court) judge, we need to return to the rights of the people being represented in court from law written by the legislature and not by law being created by a judge or an attorney.

What Respondent has written in Respondent's Brief is disgusting in its attempts to mislead this honorable court.

REASONS FOR GRANTING THE WRIT

We are not talking about an "intended" ruling in this case. We are talking about an actual ruling by Judge Hill and an actual fabrication of that ruling, in bad faith, by opposing counsel, Elton Rieves, IV, after Judge Hill verified his order immediately after making it and after Mr. Rieves and I discussed it in detail in the hall outside the courtroom immediately after the Hearing. There has been intentional wrongdoing by an officer of the court

and the Reporter's Transcript evidences the true order by Judge Hill.

The Arkansas Court of Appeals found that the last two (2) lines of the order written by Mr. Rieves was not the order made by Judge Hill. Judge Hill also made an order on December 31, in his last 30 minutes of being a Judge for that District (as the result of Amendment 80) that he was leaving the correction to the new Judge assigned. We did not have a hearing with a "new" judge until the June 6 Hearing with Judge Goodson, long after the fabricated order had purportedly been disobeyed.

As detailed in my papers in support of this Petition, I am not the one who failed to provide discovery and Judge Goodson never questioned Mr. Rieves or myself when I presented the intentional mockery of discovery by Mr. Rieves. I also showed that Judge Goodson had not read my motion. For Judge Goodson to dismiss my case since my deposition was **STILL** not scheduled [Emphasis supplied by Judge Goodson] after I presented documents proving that I had attempted to schedule it and Mr. Rieves refused, Judge Goodson denied this petitioner due process.

There was never any evidence whatsoever, to support Respondent's false claim that I was uncooperative with discovery or Respondent's false claim that "Petitioner claims to have been unjustly treated by everyone with whom she came in contact during the proceedings below." My letter to Judge Hill dated December 31, 2001, in APPELLANT'S ABSTRACT, BRIEF AND ADDENDUM, at p.131, nullifies Respondent's false statement.

Respondent is also attempting to mislead this honorable court with the statement in its brief on p.7, "Similarly, the proposed order was sent to Petitioner, but she failed to respond prior to Judge Hill signing and filing

it." The fact is that it was sent to California when Mr. Rieves knew that I was staying in Memphis (just across the Mississippi River) while I was going through storage in Marion, Arkansas, to comply with the production of documents section of Judge Hill's order. Mr. Rieves even mentioned this fact as a slip of the tongue at the Arkansas Court of Appeals Hearing. The Appellate Court asked Mr. Rieves why he would not schedule my deposition in December, while I was in the area, and he replied that the order said that it had to be scheduled in January.

Also, I never sent an "email letter to Respondent's attorney" at any time. The January 14, 2002 letter referred to was FAXED and Mailed. I think that this letter is very important to this honorable court, and it is in APPELLANT'S ABSTRACT, BRIEF AND ADDENDUM, on p.137, 138.

CONCLUSION

Contrary to the statement of Arkansas Law made by Respondent on p. 10 in its brief to this court, I submit that in the case at bar, the mere filing of a pleading does not constitute a right to be heard when the Judge does not read that pleading and does not question its contents.

I submit that the order by Judge Hill was not a final order and could have been corrected by Judge Goodson. In fact, Judge Hill made the entry in the Docket on December 31, 2001, that he was leaving the dispute as to the last two (2) lines of his order for the new judge to decide, and my motion was for the correction of the order. My motion was never heard by Judge Goodson, although it was the only one calendared in this case that day.

The Court of Appeals cited Morrell v Morrell, 48 Ark.App.54, 889 S.W.2d 772(1994) in its decision that the Court was "constrained to review the written order by

Judge Hill," even though the Court found that the written order was not what Judge Hill said. In Morrell, the issue was that a Judge was free to alter his decision prior to it being written, signed and filed with the court. I submit that such is not the situation here. Judge Hill never said what Mr. Rieves wrote regarding the two week period and for the deposition to take place in Crittenden County. It was all fabricated by an Officer of the Court, in bad faith, and Judge Hill made an order on December 31, that he was leaving the disputed written order for the next judge to decide what his order was regarding the scheduling of Plaintiff's deposition.

There were prevailing circumstances for my deposition to not have been scheduled, "still," and Judge Goodson denied this Petitioner due process by not even questioning this Petitioner or Mr. Rieves at the Hearing on the egregious wrongdoings detailed with hard evidence in my motion and at the Hearing. My letter of January 7, 2002, faxed and mailed to Mr. Rieves telling him that I had sent the 234 pages of documents and my attempt to schedule my deposition should be evidence enough that that I was complying with Judge Hill's order. I had to stay in Memphis, for the month of December, to attempt to find the documents in open storage with atrociously damaged boxes, in the snow and freezing rain, while having to use a walker for mobility, and I served INTERROGATORIES on the Defendant on December 28, 2001. I was cooperative with discovery.

Mr. Rieves intentionally fabricated the last two (2) lines of Judge Hill's written order so that he could get sanctions and even asked for terminating sanctions when he knew that Judge Hill had said it would be dismissed without prejudice if I did not obey his order. I did obey Judge Hill's order as to the production of documents and I attempted to schedule my deposition.

CONCLUSION

This Petitioner submits that a gross injustice has occurred in this case and I respectfully request that a Writ of Certiorari be granted.

Respectfully submitted,

Rosemarie Clampitt
Petitioner, In Propia Persona

P.O. Box 21414
Hot Springs, AR 71903-1414
Telephone: (501)760-3564